

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10584 of 2023

Appellant :- Mukesh Rathore

Respondent :- State of U.P. and Another

Counsel for Appellant :- Alok Kumar Singh, Sachin Srivastava

Counsel for Respondent :- G.A., Somdev Dixit

Hon'ble Mayank Kumar Jain, J.

Counter affidavit filed today by learned counsel for the informant is taken on record.

Heard learned counsel for the appellant, learned counsel for the informant, learned AGA for opposite party no.1, learned counsel for the respondent no. 2 and perused the material placed on record.

The present criminal appeal under Section 14-A(2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been filed by the appellant to set aside the impugned order dated 30.09.2023 passed by the Special Judge, SC/ST Act, Firozabad in Case Crime No. 234 of 2023, under Sections 452, 328, 384, 506, 376 of IPC and under Section 67 of I.T. Act and under Section 3(2) (5) of SC/ST Act, Police Station Makhanpur, District Firozabad.

There is an allegation against the appellant that on 27.02.2018 at around 2:00 p.m, he established physical relations with the informant by administering her some substance in cold drink. The appellant had taken some indecent photographs of the informant and made a demand of Rs. 5 lakhs, out of which Rs. 2 lakh were paid to the appellant. When further demand was made by the appellant, the informant refused to make out the demand. The appellant addressed her with caste related abuses and also threatened her. On 13.05.2023, the appellant entered in the house of informant and made a demand of Rs. 20 lakhs by showing her country made pistol. Again on 27.07.2023 through mobile call appellant made demand for some money on the pretext of indecent photographs taken by him.

Learned counsel for the appellant has submitted that appellant is innocent and has been falsely implicated in this case. There is no evidence of giving Rs. 2 lakhs to the appellant. No date has been assigned by the informant that on which date Rs. 2 lakhs were

given to the appellant. During her statement recorded under Section 164 Cr.P.C, she did not uttered even a single word about the incidents dated 27.02.2023 and 13.05.2023. The victim refused to undergo for her medical examination, therefore, allegation of rape is not corroborated with any medical evidence. The victim is married lady having two children. During her statement recorded under Section 164 Cr.P.C, she did not make any allegation about committing offence under Section S.C/S.T Act. So far as indecent photographs taken by him is concerned they are brought on record and it does not disclosed to be indecent photographs. It is also submitted that C.D.R of the mobile phone of the victim was also taken by the investigating officer and it was noted that out of 221 calls 211 calls were made by the victim herself. So for as statement of independent witness Anar Signh is concerned his mobile is not taken by the investigating officer and it was not disclosed by him that from which source he has got these indecent photographs. The appellant is languishing in jail since 25.08.2023 having no criminal history. In case, the appellant is released on bail, he will not misuse the liberty of bail.

Per contra, learned A.G.A. assisted by learned counsel for the informant opposed the prayer for bail and submitted that during her statement under Section 161 Cr.P.C, the informant has stated that she had sold the plot and the consideration was kept in her house which was given to the appellant. So far as repeated calls made by the informant is concerned they were made because the informant wanted to request repeatedly to the appellant to delete the indecent photographs.

It appears from the arguments advanced by the counsel for the parties and from perusal of material on record that the trial court has not properly considered the case of the appellant. Hence, in view of above consideration, the impugned order passed by the trial court is, hereby, set aside.

Having considered the submissions of the parties noted above, finding force in the submissions made by the learned counsel for the appellant; appellant being under-trial having fundamental right to speedy; larger mandate of the Article 21 of the Constitution of India, considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, Court is of the opinion that the appellant is entitled to be enlarged on bail.

Let appellant, **Mukesh Rathore** be released on bail in the aforesaid case crime number on his furnishing a personal bond and

two reliable sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:

- (i) The appellant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence.
- (ii) The appellant shall not pressurize/intimidate the prosecution witnesses.
- (iii) The appellant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 of Cr.P.C.
- (iv) The appellant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in the trial court.
- (v) The appellant shall remain present before the trial court on each date fixed, either personally or through his counsel.
- (vi) The appellant shall not indulge in any criminal activity or commission of any crime after being released on bail.

In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. If in the opinion of the trial court that absence of the appellant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed in accordance with law.

The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously in accordance with law after the release of the appellant, if there is no other legal impediment.

It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything said in this order.

The criminal appeal is allowed.

Order Date :- 16.12.2023

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